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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/533,673	05/03/2005	John Nike	N57.12-0001	9571
27367 7590 10/01/2007 WESTMAN CHAMPLIN & KELLY, P.A. SUITE 1400 900 SECOND AVENUE SOUTH MINNEAPOLIS, MN 55402-3319				
EXAMINER				
JUSKA, CHERYL				
ART UNIT		PAPER NUMBER		
1771				
MAIL DATE		DELIVERY MODE		
10/01/2007		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/533,673

Applicant(s)

NIKE, JOHN

Examiner

Cheryl Juska

Art Unit

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Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 and 20-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 and 20-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. Applicant's amendment filed July 19, 2007, has been entered. Claims 1, 2, 13, and 22 have been amended as requested. Claims 19 and 27-35 are cancelled. Thus, the pending claims are 1-18 and 20-26.
2. Said amendment is sufficient to withdraw the 112, 2nd set forth in sections 1-3 of the last Office Action (Non-Final Rejection mailed 04/04/07). The amendment to claim 13 is sufficient to withdraw the 102 rejection of claims 13-16 and 20 as set forth in section 5 of the last Office Action. Specifically, applicant has amended the claim to limit the pile filaments woven through the backing sheet to "having a random directional weave pattern" (i.e., subject matter of cancelled claim 19). Since Pacione does not teach the subject matter of claim 19, the 102 rejection is hereby withdrawn.

Claim Rejections - 35 USC § 102

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 1, 4-7, 11, 22, and 23 stand rejected under 35 U.S.C. 102(b) as being anticipated by US 4,822,658 issued to Pacione as set forth in section 5 of the last Office Action.

Applicant has amendment claim 1, limiting the looped filament carpet and resilient base layer to "covering the underlying surface." Independent claim 22 is similarly amended.

Applicant argues that Pacione does not anticipate the claimed invention since the base layer of

Pacione is a strip around a perimeter of the room (Amendment, paragraph spanning pages 6-7). However, said amendment is insufficient to overcome the Pacione rejection since said limitation merely requires the base to cover the surface, rather than cover the surface continuously or entirely. Therefore, the rejection stands for claims 1, 4-7, 11, 22, and 23.

Claim Rejections - 35 USC § 103

5. Claims 10, 12, and 21 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Pacione reference as set forth in section 7 of the last Office Action.

Claims 13-16 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Pacione reference for reasons analogous to those set forth in the rejection of claim 19 set forth in section 7 of the last Office Action.

Applicant traverses the rejection that the claimed random directional weave pattern would have been obvious to one skilled in the art in order to provide an aesthetic function. Specifically, applicant asserts said weave pattern is not for aesthetics but to improve the performance of the artificial ski slope (Amendment, page 7, 4th paragraph). This argument is unpersuasive since applicant's motivation need not be the same as the suggested motivation of the prior art. The fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985). Therefore, the above rejection stands.

6. Claims 8, 9, 17, 18, and 24-26 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Pacione '658 reference in view of US 6,298,624 issued to Pacione as set forth in section 8 of the last Office Action.

Applicant presents no new arguments with respect to this rejection (Amendment, page 10, 2nd and 3rd paragraphs). As such, the rejection stands.

7. Claims 1-10, 13-18, and 22-26 stand rejected under 35 U.S.C. 103(a) as being unpatentable over JP 10-046516 issued to Kuriyama in view of US 4,148,477 issued to Larson as set forth in section 9 of the last Office Action.

Applicant traverses said rejection by asserting that the concrete base of Kuriyama is not resilient, as presently required by applicant's claim 1 (Amendment, page 9, 1st paragraph). The examiner agrees but respectfully notes that Kuriyama's concrete correlates to applicant's underlying surface rather than the resilient base. The hook fastener substrate adhered to the concrete base is equivalent to applicant's claimed resilient base layer covering the underlying concrete surface. Hence, applicant's argument is found unpersuasive and the above rejection stands.

8. Claims 11, 12, 20, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 10-046516 issued to Kuriyama in view of US 4,148,477 issued to Larson as applied to claims 1 and 13 above and in further view of US 4,822,658 issued to Pacione as set forth section 10 of the last Office Action.

Applicant has presented no new arguments with respect to said rejection (Amendment, paragraph spanning pages 10-11). As such, the above rejection stands.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

10. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Cheryl Juska/
Primary Examiner
Art Unit 1771

cj

October 1, 2007